



2009-053

STATE OF ALABAMA
OFFICE OF THE ATTORNEY GENERAL

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Honorable Karen Roper
Calhoun County Revenue Commissioner
1702 Noble Street, Suite 106
Anniston, Alabama 36201

Revenue Commissioners - Ad
Valorem Taxes - Exemptions -
Churches - Rental Property

Pursuant to section 40-9-1 of the Code of Alabama, real or personal property owned by any educational, religious, or charitable institution, society, or corporation let for rent or hire or for use for business purposes shall not be exempt from taxation notwithstanding that the income from such property shall be used exclusively for educational, religious, or charitable purposes.

A vacant parsonage loses its tax-exempt status if there is no good-faith intent that it is to be used for a future tax-exempt purpose.

A minister's family member may live in the parsonage without the parsonage losing its otherwise tax-exempt status.

Dear Ms. Roper:

This opinion of the Attorney General is issued in response to your request.

QUESTIONS

A local Methodist church allows a parsonage to its ministers. In this particular case, the minister is living out of town due to his full-time job. The parsonage has been rented on and off in the past few years and, at times, is vacant. Presently, the parsonage is being remodeled to be rented out. I have several questions relating to the taxation listed below:

- (1) Is the parsonage taxable if it is rented?
- (2) If the property was vacant prior to and during remodeling, is it tax exempt?
- (3) If the minister allows a member of his family to live in the parsonage, is it exempt?

FACTS AND ANALYSIS

Section 40-9-1 of the Code of Alabama states, in part, as follows:

The following property and persons shall be exempt from ad valorem taxation and no other:

- (1) All bonds of the United States and this state and all county and municipal bonds issued by the counties and municipalities of this state, all property, real and personal, of the United States and this state and of county and municipal corporations in this state; all cemeteries, *all property, real or personal, used exclusively for religious worship, for schools or for purposes purely charitable; provided, that property, real or personal, owned by any educational religious or charitable institution, society or corporation let for rent or hire or for use for business purposes*

shall not be exempt from taxation, notwithstanding that the income from such property shall be used exclusively for education, religious or charitable purposes . . .

ALA. CODE § 40-9-1 (2003) (emphasis added). This Office has consistently maintained that it is a question of fact to be determined by the tax-assessing official as to whether property is being used exclusively for, as it pertains to your questions, religious worship. For examples, see opinions issued to the following:

- Honorable Michael Miaoulis, Board of Equalization of Montgomery County, dated October 5, 1992, A. G. No. 93-00003; and to
- Honorable Jim Hildreth, Escambia County Tax Assessor, dated February 26, 1999, A.G. No. 99-00124.

As to the first part of your question, section 40-9-1 of the Code is quite clear that property owned by a church that is rented or used for business purposes loses its exemption. This has been affirmed by Alabama courts. *See Most Worshipful Grand Lodge v. Norred*, 603 So. 2d 996 (Ala. 1992), *citing State v. Church of the Advent*, 208 Ala. 632, 95 So. 3 (Ala. 1923). Therefore, part 1 of your question is answered in the affirmative. Property that would otherwise be exempt as being used exclusively for religious purposes loses the exemption when it is leased or rented.

Part 2 of your question is answered by a reading of a decision of the Alabama Supreme Court in *Monroe v. Baptist Health Care Found.*, 772 So. 2d 414 (2000). In that decision, concerning charitable rather than religious property, the Court found that "vacant property of a nonprofit corporation being held with a good-faith intent that it be used for charity has a charitable purpose." *Id.* at 417. You stated in your question that the subject property is vacant and is being remodeled in anticipation of being rented. Again, although it is the duty of your office to make a factual determination as to whether the vacant parsonage is being held with a good-faith intent that it remain an exclusively religious-use property, it appears that this property is not being held with that intent.

As to the final part of your question, a family member of the minister may live in the parsonage without the parsonage losing its tax-exempt status. The parsonage exists for the benefit of the minister. If

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that benefit is derived by having a family member of the minister reside there, then it would not appear to change the property's tax-exempt status under section 40-9-1 of the Code. It should be noted that a "family member" is limited to the spouse and dependants of the minister. Please see opinion issued to Honorable Doster L. McMullen, Tax Assessor, Tuscaloosa County, dated February 3, 1998, A.G. No. 98-00084.

CONCLUSION

Based on the foregoing, it is the opinion of this Office that the parsonage loses its tax-exempt status if it is rented. The vacant parsonage also loses its tax-exempt status if a factual determination is made that there is no good-faith intent on the part of the religious organization that the property will remain an exclusively religious-use property. Finally, a family member of a minister may reside in the parsonage without the parsonage losing its religious-use, tax-exempt status.

I hope this sufficiently answers your questions. If this Office can be of further assistance, please contact Keith Maddox, Legal Division, Department of Revenue.

Sincerely,

TROY KING
Attorney General
By:

A handwritten signature in cursive script that reads "Brenda F. Smith".

BRENDA F. SMITH
Chief, Opinions Division

TK/WKM

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